

## § 390.90

Counsel or his designee determines to be just, reasonable, and proper.

(c) *Attendance of witnesses.* Subpoenas issued in connection with an investigative proceeding or formal examination proceeding may require the attendance and/or testimony of witnesses from any State or territory of the United States and the production by such witnesses of documentary or other tangible evidence at any designated place where the proceeding is being (or is to be) conducted. Foreign nationals are subject to such subpoenas if such service is made upon a duly authorized agent located in the United States.

(d) *Witness fees and mileage.* Witnesses summoned in any proceeding under this part shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Such fees and mileage need not be tendered when the subpoena is issued on behalf of the FDIC by any of its designated representatives.

### Subpart E—Practice Before the FDIC

#### § 390.90 Scope of subpart.

This subpart prescribes rules with regard to general practice before the FDIC on one's own behalf or in a representative capacity and prescribes rules describing the circumstances under which attorneys, accountants, appraisers, or other persons may be suspended or debarred, either temporarily or permanently, from practicing before the FDIC. In connection with any particular matter, reference also should be made to any special requirements of procedure and practice that may be contained in the particular statute involved or the rules and forms adopted by the FDIC thereunder, which special requirements are controlling. In addition to any suspension hereunder, a person may be excluded from further participation under parts 390 and 391 from an adjudicatory proceeding in accordance with § 390.35(a)(1), from a removal hearing in accordance with § 390.12, or from an investigatory proceeding in accordance with § 390.84(b)(2). Furthermore, no person who has been suspended or debarred from practice before the FDIC in accordance with the provisions of

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this subpart may submit to the FDIC, either directly or on behalf of an interested party, any written documents or petitions otherwise permitted under the Administrative Procedure Act.

#### § 390.91 Definitions.

As used in this subpart:

*Attorney* means any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth or the District of Columbia;

*Executive Secretary* means the Executive Secretary of the FDIC;

*FDIC* means the Federal Deposit Insurance Corporation;

*OTS* means the Office of Thrift Supervision;

*Practice* means transacting any business with the FDIC, including:

(1) The representation of another person at any adjudicatory, investigatory, removal or rulemaking proceeding conducted before the FDIC, a presiding officer or the FDIC's staff, including those proceedings covered in subparts B, C, and D;

(2) The preparation of any statement, opinion, financial statement, appraisal report, audit report, or other document or report by any attorney, accountant, appraiser or other licensed expert which is filed with or submitted to the FDIC, with such expert's consent or knowledge in connection with any application or other filing with the FDIC;

(3) A presentation to the FDIC, a presiding officer or the FDIC's staff at a conference or meeting relating to an association's or other person's rights, privileges or liabilities under the laws administered by the FDIC and rules and regulations promulgated thereunder;

(4) Any business correspondence or communication with the FDIC, a presiding officer or the FDIC's staff;

(5) The transaction of any other formal business with the FDIC on behalf of another, in the capacity of an attorney, accountant, appraiser or other licensed expert; and

*Presiding officer* includes the Board of Directors or an administrative law judge appointed under section 3105 or detailed pursuant to section 3344 of title 5 of the U.S. Code and, as used in

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this subpart, the term shall be construed to refer to whichever of the above-identified individuals presides at a hearing or other proceeding, except as otherwise specified in the text.

### § 390.92 Who may practice.

(a) *By non-attorneys.* (1) An individual may appear on his own behalf (*pro se*); a member of a partnership may represent the partnership; a bona fide and duly authorized officer of a corporation, trust or association may represent the corporation, trust or association; and an officer or employee of a commission, department or political subdivision may represent that commission, department or political subdivision before the FDIC.

(2) Any accountant, appraiser or other licensed expert may practice before the FDIC in a professional capacity.

(b) *By attorneys.* Any association or other person may be represented in any proceeding or other matter before the FDIC by an attorney.

(c) *Authority to act as representative.* Any licensed expert or professional transacting business with the FDIC in a representative capacity may be required to show his authority to act in such capacity.

### § 390.93 Suspension and debarment.

(a) The FDIC may censure any person practicing before it or may deny, temporarily or permanently, the privilege of any person to practice before it if such person is found by the FDIC, after notice of and opportunity for hearing in the matter,

(1) Not to possess the requisite qualifications to represent others,

(2) To be lacking in character or professional integrity,

(3) To have engaged in any dilatory, obstructionist, egregious, contemptuous, contumacious or other unethical or improper professional conduct before the OTS or FDIC, or

(4) To have willfully violated, or willfully aided and abetted the violation of, any provision of the laws administered by the OTS or FDIC or the rules and regulations promulgated thereunder.

(b) *Automatic suspension.* (1) Any person who, after being licensed as a pro-

fessional or expert by any competent authority, has been convicted of a felony, or of a misdemeanor involving moral turpitude, personal dishonesty or breach of trust, shall be suspended forthwith from practicing before the FDIC.

(2) Any accountant, appraiser or other licensed expert whose license to practice has been revoked in any State, possession, territory, Commonwealth or the District of Columbia, shall be suspended forthwith from practice before the FDIC.

(3) Any attorney who has been suspended or disbarred by a court of the United States or in any State, possession, territory, Commonwealth or the District of Columbia, shall be suspended forthwith from practicing before the FDIC.

(4) A conviction (including a judgment or order on a plea of *nolo contendere*), revocation, suspension or disbarment under paragraphs (b)(1), (b)(2) and (b)(3) of this section shall be deemed to have occurred when the convicting, revoking, suspending or disbarring agency or tribunal enters its judgment or order, regardless of whether an appeal is pending or could be taken.

(5) For purposes of this part, it shall be irrelevant that any attorney, accountant, appraiser or other licensed expert who has been suspended, disbarred or otherwise disqualified from practice before a court or in a jurisdiction continues in professional good standing before other courts or in other jurisdictions.

(c) *Temporary suspension.* (1) The FDIC, with due regard to the public interest and without preliminary hearing, by order, may temporarily suspend any person from appearing or practicing before it who, by name, has been:

(i) Permanently enjoined (whether by consent, default or summary judgment or after trial) by any court of competent jurisdiction or by the OTS or FDIC itself in a final administrative order, by reason of his misconduct in any action brought by the OTS or FDIC based upon violations of, or aiding and abetting the violation of, the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1461 *et seq.*, the Federal Deposit Insurance Act, as amended, 12